

ISLE OF MAN
GAMBLING
SUPERVISION
COMMISSION



**GSC Guidance on the
Gambling (Anti-Money Laundering and
Countering the Financing of Terrorism) Act 2018**

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1. Introduction

1.1 About this document

The Gambling Supervision Commission (GSC) is the regulator that supervises the gambling sectors' compliance with Isle of Man "Gambling Acts" and Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) legislation.

This document provides guidance on the GSC's intended use of provisions in the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 in relation to the supervision of the gambling sector's compliance with the AML/CFT legislation.

It should be noted that the GSC's policy on the use of the provisions of the Act may develop over time as the provisions are used in practice.

1.2 Gambling Acts

The primary law that sets out the licensing and general compliance regime relating to the gambling sector are known collectively as the "Gambling Acts" and include –

- a) the Gaming (Amendment) Act 1984;
- b) the Casino Act 1986;
- c) the Gaming, Betting and Lotteries Act 1988;
- d) the Online Gambling Regulation Act 2001;
- e) the Gambling (Amendment) Act 2006; and
- f) the Gambling Supervision Act 2010.

Links to the Gambling Acts and regulations made under those Acts are available on the GSC's website: www.gov.im/about-the-government/statutory-boards/gambling-supervision-commission

The necessary provisions for the GSC to oversee compliance with the requirements of the Gambling Acts plus powers to deal with instances of non-compliance with those requirements are set out in the Gambling Acts.

1.3 AML/CFT Legislation

AML/CFT legislation is separate to the general compliance requirements of the Gambling Acts. The AML/CFT legislation applies to the following businesses that are "in the regulated sector"¹ -

- a) any activity permitted to be carried on by a licence holder under a casino licence granted under the Casino Act 1986 or on premises in respect of which a temporary premises certificate is in issue under Part IIA of that Act;
- b) the business of a bookmaker within the meaning of the Gaming, Betting and Lotteries Act 1988;
- c) the business of providing online gambling within the meaning of Section 1 of the Online Gambling Regulation Act 2001;

Whereas the Gambling Acts include supervisory powers regarding general compliance matters, the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 provides the GSC with the necessary powers for dealing with supervision of the AML/CFT legislation only, which is-

- a) Sections 7 to 11 and Section 14 of the Anti-Terrorism and Crime Act 2003;
- b) Part 3 (Money Laundering) of the Proceeds of Crime Act 2008;
- c) Parts 2, 3 and 4 of the Terrorism and Other Crime (Financial Restrictions) Act 2014;
- d) Any instrument of legislative character made under a) to c).

Item d) of the list above includes AML/CFT Codes made under the Proceeds of Crime Act which are currently –

- a) the Money Laundering and Terrorist Financing (Online Gambling) Code 2013;
- b) the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015.

¹ As set out in the Proceeds of Crime (Business in the Regulated Sector) Order 2015

2. The Island's AML/CFT Strategy

The Isle of Man Government published its 2017-2020 Financial Crime Strategy² in August 2017.

This document highlights the Government's high-level policy commitment to maintaining a 'robust, zero tolerance stance' against money laundering and terrorist financing. The document also comments on the findings of the Island's AML/CFT National Risk Assessment³ and the 2016 MONEYVAL Mutual Evaluation Report⁴.

The Government's strategy is underpinned by the following four priority objectives which are:

1. Understanding the money laundering and financing terrorism threat, risks and harm facing the Isle of Man;
2. Ensuring that the Isle of Man is a hostile jurisdiction for money laundering and the financing of terrorism;
3. Pro-actively identifying and pursuing offenders; and
4. Taking the benefit out of crime.

These priority objectives are generally applicable to both money laundering and the financing of terrorism and proliferation. However, the Isle of Man Government also has a separate internal strategy which deals specifically with the financing of terrorism and financing of proliferation. These two strategies together supersede the National AML/CFT Strategy 2016-2018.

The introduction of the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 falls under Priority Objective 2 of the Strategy, 'Ensuring that the Isle of Man is a hostile jurisdiction for money laundering and the financing of terrorism'.

² <https://www.gov.im/media/1358112/isle-of-man-financial-crime-strategy-2017-2020.pdf>

³ <https://www.gov.im/media/1350893/isle-of-man-national-risk-assessment-2015.pdf>

⁴ <https://rm.coe.int/anti-money-laundering-and-counter-terrorist-financing-measures-isle-of/168071610e>

3. The GSC's AML/CFT Strategy

The GSC has a goal as a regulator: to make sure the AML/CFT legislation is correctly and effectively applied by gambling operators.

To achieve this goal, the GSC has an AML/CFT enforcement strategy:

- 1) To explain AML/CFT obligations and offer guidance to operators so that AML/CFT obligations are clearly understood;
- 2) To assume virtue in each operator⁵, that each operator sees the intrinsic value of combating money laundering and terrorist financing and is seeking to comply with the law;
- 3) Where inspection or reporting demonstrates a deficiency, to explain that deficiency to the operator and secure a commitment to fix the deficiency;
- 4) Where inspection or reporting demonstrates repeat deficiencies, unfixed deficiencies or a pattern of serial deficiencies in different areas, to examine the underlying causes and consider using the formal sanctioning provisions of the Act;
- 5) If the GSC determines that AML/CFT compliance failures, either singly or in aggregate stem from negligence or contempt for the law, to review the suitability of the operator's leadership and in cases where material risk exists, to review the status of the operator;
- 6) If repeated inspection demonstrates that AML/CFT compliance is embedded within an operator's approach, to consider moving that operator to a less frequent and less vigorous compliance regime under the GSC's risk-based approach to supervision.

⁵ In order to become an 'operator' a licence must have been granted which includes consideration of the fitness and propriety of the company's owners and controllers.

4. GSC Policy on use of AML/CFT Sanctioning Powers

4.1 GSC's approach to AML/CFT compliance failings

The GSC has to be satisfied that issues that pose a risk to the public and the Island's reputation are given appropriate attention and that such issues are dealt with promptly to reduce such risks. Wherever appropriate, the GSC will work with the sector through its normal supervisory processes to address any failings identified.

Typically, a visit report resulting from a supervisory visit will include actions and deadlines to address any identified areas of weakness or contravention of the AML/CFT legislation. The GSC will then work with the operator in question to ensure that actions are completed.

Where the GSC has particular concerns over an operator's AML/CFT compliance (whether identified through an inspection or not), the matter will be referred to the GSC's Risk Committee for a 'Serious Case Review'.

4.2 Serious Case Review

The GSC's Risk Committee is made of a quorum of the Senior Management Team.

The GSC's Senior Management Team Comprises-

- the Chief Executive;
- the Deputy Chief Executive;
- the Director of Licensing and Compliance;
- the Deputy Director of AML/CFT; and
- the Senior Inspector.

The outcomes of a 'Serious Case Review' are proportionate and are based on the considerations of the factors listed at 4.3 of this document and may result in –

- 1) Standard actions, which include resolutions to -
 - a) address the issue through the normal compliance programme;
 - b) monitor the situation and review at a later date;
 - c) apply enhanced supervision under the GSC's risk-based approach;
which are dealt with by the Inspectorate or Senior Management Team.
- 2) Formal actions using the provisions of the Act, which may result in an action to-
 - d) issue a warning notice (under S.23);
 - e) require a person to attend before the Commission (under S.12);
 - f) refer the matter to the Commission recommending that one, or a combination of the following actions be approved, specifically a determination to-
 - i) restrict all, or part, of the operator's business operations (under S.16);

- ii) add to or amend the operator's licence conditions (under S.17);
- iii) issue a direction to an operator (under S.18);
- iv) issue a public statement (under S.19);
- v) apply for an injunction or remedial order (under S.21);
- vi) require the operator to pay a civil penalty (under S.22);
- vii) issue a warning notice (under S.23);
- vii) direct the operator to appoint or contract an appropriate professional (under S.24);
- viii) direct an operator not to appoint an individual (under S.25);
- ix) issue a preliminary notice regarding "not fit and proper" proceedings (under S. 27);
- x) prohibit a "not fit and proper" person (under S.26);
- xi) suspend or revoke the operator's licence, permit or certificate (under S.30) which must be referred to the board of the Commission for approval.

3) A decision to prosecute, at which point the matter will be referred to the Attorney General's Chambers requesting that criminal proceedings be initiated under the Act or AML/CFT legislation.

4.3 Considerations for determining outcomes

'Serious Case Review' and Commission decisions will be based on a review of relevant information. Below are examples of mitigating factors and aggravating factors -

Mitigating factors	Aggravating factors
The individual/operator in question brought the issue to the GSC's attention.	The GSC discovered an issue that was known by the individual/operator in question but not brought to the GSC's attention.
The individual/operator cooperated fully with the GSC's enquiries and investigation.	Information during any investigation was not forthcoming, was held back or the individual/operator was not cooperative.
The issue could not have been easily foreseen.	The issue was easily avoidable. e.g., the GSC had issued guidance on the matter or published details of similar failings by another operator previously.
The individual/operator made every effort to follow the GSC's guidance, advice and actions to address the issue and prevent further issues.	The individual/operator did not make satisfactory efforts to address the issue and prevent further issues.
The issue was limited to a small number of accounts, customers, transactions, etc.	The matter affected many accounts, customers, transactions, etc.
The breach was technical in nature and had little or no impact on customers, the industry's reputation or on the likelihood of money laundering and terrorist financing taking place.	The issue had a large impact or potential for impact either on customers, the industry's reputation or likelihood of money laundering and terrorist financing taking place.
This is the first issue for that operator that has been brought to a 'Serious Case Review'.	This is not the first time that a 'Serious Case Review' has been conducted on the individual/operator.
The issue was due to deficiencies in one area, one procedure or the actions of only one individual.	The issue was wide-spread, systematic or due to deliberate actions of the organisation.

A summary of all of the sanctioning powers available to the GSC is provided at Part 6 of this document.

5. Supervision and Oversight (Part 2 of the Act)

(S.6) Returns

Section 6 allows the Commission to require operators to submit a compliance return of AML/CFT information. The Commission must specify the frequency with which a return must be submitted and the information required.

The Commission may use information contained within the compliance returns to assist in a National Risk Assessment.

No criminal offence is mandated for failure to comply with this Section, nor are there powers to impose a civil penalty.

Instead, the Commission may issue a direction to require the operator to comply. Failure to comply with a direction is an offence and a civil penalty may be imposed.

(S.7) On-site inspections and investigations

Section 7 permits a person authorised by the Commission (an “authorised person”) to enter relevant premises at any reasonable time to conduct on-site inspections and investigations without a warrant.

Relevant premises are –

- a) the premises where gambling is conducted by an operator;
- b) premises when an operator is operating under a temporary exemption⁶; or
- c) premises which the authorised person has reasonable cause to believe are, or have been, used by an operator for any purpose connected to gambling.

Item c) above is intended to capture premises where gambling may not be conducted by an operator but where records may be held or accessed, such as the premises of a corporate service provider or information technology service provider.

The objective of accessing premises is to assess an operator’s compliance with the AML/CFT legislation and consideration must be given to the operator’s own procedures.

The authorised person may take possession of relevant books, accounts and documents for as long as is necessary and may take copies as necessary. This applies however or wherever those records are stored.

⁶ Under the Gaming, Betting and Lotteries Act 1988

Failure, without reasonable excuse to comply with an authorised person's request for access, without reasonable excuse is an offence. However, an authorised person must provide evidence of their authority if requested to do so. If the authorised person fails to provide that evidence and are refused access, this would not constitute an offence.

In practice, an authorised person will be able to provide evidence of their authority either by showing their GSC identification or by having a known GSC staff member confirm their identity and authority.

Where there is a reasonable excuse not to comply, arrangements must be made to permit access as soon as possible.

Please note that the GSC will endeavour to make arrangements in advance, where appropriate, to access premises at a mutually convenient time therefore they should have been advised of any issues in advance.

(S.8) Obligations to assist

Section 8 requires staff members of operators, service providers and persons who own or operate premises connected to gambling to cooperate with inspections and investigations under Section 7. They must also answer questions and provide explanations of records.

It is an offence to fail, without reasonable excuse, to assist, although no member of staff is required to disclose anything that is subject to legal privilege and a statement provided under this Section may not be used as evidence against that staff member except where the information provided was false or misleading.

A staff member must also produce documents, or copies, when asked to do so or advise to the best of their knowledge where the documents are.

This Section applies to the staff members of service providers and premises connected to gambling as it is recognised that the gambling industry, particularly online gambling, evolves quickly and the way that customers, operators and service providers (such as service providers) interact may change significantly in future. The term "service provider" was deliberately not defined in law partly because there is no way to predict how structures and businesses will look in the future and partly because there is scope to structure businesses in a way that falls outside standing definitions.

Below is the GSC's current view on businesses that would be in-scope for the requirements of this Section –

Owners/operators of premises where records are stored or managed whether in paper format or electronic format, including data hosting centres.

A corporate service provider who provides, or has provided, services such as the provision of directors or Money Laundering Reporting Officer to an operator.

Owners/operators of premises used as a registered address or mailing address.
Owners/operators of premises used to provide operational services to an operator such as customer support or marketing.

(S.9) Offences in connection with inspections and investigations, search warrants and information requests

Section 9 provides a more serious offence for falsifying, concealing, destroying or disposing of information that the persons know or suspects to be relevant to an inspection or investigation (under S.7), an information request (under S.10 and S.11) or a search warrant (under S.13).

As this offence relates to a deliberate dishonest action to evade a request from the GSC rather than simply not assisting in providing access to premises, records or answering questions, the maximum penalty for the offence is higher than the offences stated under those sections.

This offence carries a maximum (on conviction on information) sentence of 2 years imprisonment, a fine, or both.

(S.10) Power to request information & (S.11) Procedure and further details for requesting information

Section 10 empowers an authorised person to request information of any person the Commission has reasonable grounds to believe has that information in order to enable it to better supervise compliance with the AML/CFT legislation. Failure, without reasonable excuse, to provide that information within the timeframe provided is an offence.

Section 11 provides further detail on the procedure for obtaining information under Section 10. S. 11 allows an information request to be made regarding the affairs of a customer, a body corporate that meets any of the listed specifications, or a partnership of which an operator is, or has been, a member. This Section also allows the Commission to issue a direction to reinforce a request for information and such a direction must include a statement of reasons for its issue.

Similarly to Section 8, information obtained via a direction made under this Section may not be used as evidence against that staff member except where the information provided was false or misleading.

(S.12) Power to require persons to attend before the Commission, etc.

Section 12 empowers a Justice of the Peace to authorise an authorised person to require a person to attend before the Commission to answer questions or produce documents. This Section also permits the attendance of an appropriate expert to attend the sitting and contribute to whatever extent the Commission permits.

The Justice of the Peace may make the authorisation where satisfied that there is good reason for requesting the person to attend before the Commission, it relates to an investigation into the affairs of an operator and it is relevant to assessing AML/CFT compliance.

Where documents are produced, the Commission may take possession of them, copies of them or require the person to provide an explanation of any of them.

Failure, without reasonable excuse, to comply is an offence.

Similarly to Section 8, information obtained via a direction made under this Section may not be used as evidence against that staff member except where the information provided was false or misleading.

(S.13) Search warrants

Section 13 states that a Judge may issue a search warrant, if satisfied by information on oath laid by the Commission that a person has failed to comply with an information request, it is not practicable to serve a notice under Section 12 or that the service of such a notice might seriously prejudice the investigation.

The warrant may authorise a person named in it to enter (using reasonable force) and search the premises and to take possession of documents appearing to be documents of the description specified in the information or documents that appear to contain evidence of an offence. The person may take the documents or take any other steps which may be necessary for preserving them and preventing interference with the documents.

A person executing a warrant issued under this Section must be accompanied by a Constable.

A person who intentionally obstructs a person exercising a warrant commits an offence.

(S.14) Information sharing

Section 14 states that the Commission may share non-aggregated data with parties set out in Schedule 2 to the Gambling Supervision Act 2010, with parties prescribed in an order approved by Tynwald or with the Financial Services Authority, with respect to corporate service providers that provide service to gambling operators. It also clarifies that disclosures made must be in accordance with the restrictions imposed by Schedule 2.

6. Summary of Sanctions & Offences

Action	Subject	Rationale
S.16 Restrict permit/licence S.17 Licence conditions	Operator	<ul style="list-style-type: none"> - Remediation - Prevention of further breaches - Reduce potential for harm
S.18 Directions	Operator	<ul style="list-style-type: none"> - Remediation - Prevention of further breaches
S.19 Public statement	Operator / Individual	- Protect the public and/or sector
S.21 Injunctions and remedial orders	Operator / Individual	- Prevention of further breaches
S.22 Civil penalties	Operator	- Punishment / Deterrent
S.23 Warning notice	Individual	- Remediation
S.24 Direction to appoint appropriate expert	Operator	- Remediation
S.25 Direction not to appoint individual	Operator regarding an Individual	- Prevention of further breaches
S.26 Prohibition of "not fit and proper" persons	Individual	<ul style="list-style-type: none"> - Punishment / Deterrent - Protect the public and/or sector
S.30 Suspension or revocation	Operator	<ul style="list-style-type: none"> - Remediation - Punishment / Deterrent Protect the public and/or sector
S.33 Offences	Officers of the body corporate	- Punishment / Deterrent

7. Sanctions, Offences and Appeals (Parts 3 and 4 of the Act)

(S.15) Sanctioning powers

Section 15 states that in addition to the sanctioning powers in this Part of the Act, the Commission may also take the following actions to identify failings through visit reports, set actions and deadlines to remedy deficiencies, increase the frequency or intensity of future inspections or refer to the Attorney General for prosecution for a breach of the AML/CFT legislation or the Act.

This Section does not provide any new powers but merely outlines steps that the Commission can already take as an alternative, or in addition, to formal sanctioning powers.

(S.16-17) Power to restrict holders of permits or licences & Licence conditions

Subject of the action	Operator
Rationale	<ul style="list-style-type: none">- Remediation- Prevention of further breaches- Reduce potential for harm

What the Act says-

Section 16 allows the Commission, in relation to AML/CFT failings, to restrict all or part of a bookmaker's activities in relation to one or more of the bookmaker's betting offices for a specified time period unless rectification occurs prior to the end date. Section 16 applies to bookmakers instead of Section 17 as bookmaker permits do not include licence conditions.

The Commission must notify the bookmaker in writing detailing the alleged AML/CFT failing and providing them with the opportunity to make representations to show cause why the Commission should not take the proposed action.

Failure to comply with a restriction under Section 16 is an offence.

Section 17 allows the Commission to add or amend an operator's licence conditions for AML/CFT reasons in order to restrict their activities until satisfied that controls are in place or recommendations or guidance are being complied with. The Commission must give the licence holder written notice.

The Commission must notify the operator in writing detailing the alleged AML/CFT failing and provide them with the opportunity to make representations to show cause why the Commission should not make the proposed addition or amendment.

N.B. These powers are in addition to powers to amend licence conditions under the gambling acts.

How will this work in practice?

The GSC will use Section 16 to restrict certain activities of a bookmaker and Section 17 to impose licence conditions on a casino or online gambling operator to address an AML/CFT matter. The GSC anticipates that these powers would be used where AML/CFT breaches have been identified and –

- a) the issues have not been resolved in a timely manner following a visit report or other instruction from the GSC;
- b) the use of other sanctioning powers under the Act has not resulted in the issues being resolved in a timely manner; or
- c) where the GSC considers that the issues are serious enough to warrant restriction on activities or additional licence conditions in order to prevent any further breaches.

Additional requirements in licence conditions would be used where the requirements are to be applied over a long term basis. For short term requirements or requirements that are a reaction to a particular AML/CFT failing, a direction under Section 18 may be more appropriate.

Examples of possible restrictions include but are not limited to –

- a) customer type (e.g. PEP, high risk, foreign residents);
- b) payment type (e.g. non-GBP payments, card payment);
- c) transaction size (e.g. no bets allowed over £x amount);
- d) transaction type (e.g. no bets allowed on local sports events).

Examples of possible recommendations that could be added via licence conditions include, but are not limited to, a requirement to –

- a) report certain activity or additional information to the GSC;
- b) undertake EDD on certain customer(s) or groups of customers;
- c) undertake CDD at a lower threshold than mandated in the Code;
- d) obtain GSC approval before undertaking certain activities.

(S.18) Directions

Subject of the action	Operator
Rationale	- Remediation - Prevention of further breaches

What the Act says-

Section 18 allows the Commission to issue directions to operators to require them to undertake a specified action, to impose requirements or to require an operator to provide a report to the Commission.

A direction must be made in writing and must include a statement of reasons for its issue.

The Commission may vary or revoke a direction and the requirement to issue a statement of reasons equally applies to the variation or revocation of a direction.

Failure to comply with a direction is a criminal offence. The penalty, on summary conviction is a fine not exceeding £5,000, a custody term not exceeding 6 months, or both.

In addition to the penalties for the criminal offence, the operator may also be subject to a public statement under Section 19 (Public Statements), an injunction or remedial order under Section 21 and consideration of whether the operator's controllers or senior managers are "not-fit-and-proper" persons.

How will this work in practice?

The GSC will use Section 18 to require an operator to provide a detailed report to the GSC in respect of AML/CFT findings or impose certain requirements on an operator to address AML/CFT failings.

A report would be used where the GSC wants the operator to investigate the root causes of AML/CFT failings and propose a course of action to remediate failings and prevent future failings.

In some cases the GSC may choose to state the action required to remediate AML/CFT failings.

Examples of possible actions required via a direction include but are not limited to –

- a) establishment or improvement of certain AML/CFT processes and procedures;
- b) implementation of appropriate software systems;
- c) additional AML/CFT resource and staff members;
- d) AML/CFT remediation projects such as a review of customer due diligence files.

(S.19-20) Public statements & Notice period for public statements

Subject of the action	Operator / Individual
Rationale	- Protect the public and/or sector

What the Act says-

Section 19 allows the Commission to issue a public statement regarding a direction issued under Section 18 or concerning a person that has contravened a direction or AML/CFT legislation. The statement must relate to gambling activities and be in the public interest.

If a public statement identifies an operator or person the Commission must, if practicable to do so, serve notice on the operator or person. The notice must include reasons for the decision, provide the intended date of the statement and a copy of the statement.

Section 20 requires the Commission to wait one month from the date of a notice issued under Section 19 until publication of the notice. However, the Commission may publish a statement earlier if the subject of that statement consents to an earlier date or if an earlier date is in the public interest.

If an appeal is made to the Tribunal and the Tribunal orders that the statement must not be published earlier than the specified date then the Commission must not publish the statement earlier.

How will this work in practice?

The GSC will use Section 19 to make public statements regarding an operator or individual in relation to a direction made under Section 18 or breaches of the AML/CFT requirements. The GSC would consider using this action only when it considers this course of action to be in the public interest and will provide one month notice, where appropriate.

Statements will be published on the GSC's website. Statements will remain on the site regardless of any actions taken in response to the direction of breaches of AML/CFT legislation.

(S.21) Injunctions and remedial orders

Subject of the action	Operator / Individual
Rationale	- Prevention of further breaches

What the Act says-

Section 21 allows the Commission to apply to the Court for an injunction or remedial order if it is satisfied that a person will contravene –

- a) a direction under Section 18;
- b) a direction to appoint an appropriate expert under Section 24;
- c) a direction not to appoint an individual under Section 25;
- d) a prohibition of a “not fit and proper” person under Section 26; or
- e) the AML/CFT legislation.

Such an order seeks to prevent the contravention or further contravention of the aforementioned Sections and requirements. The Court may also make an order requiring the person to take specified remedial actions.

How will this work in practice?

The GSC will consider using Section 21 where there is reason to believe that a person will contravene Sections 18, 24, 25, 26 or the AML/CFT legislation. The GSC anticipates using this Section to prevent further contraventions where speedy action is required.

Although contravention of the above listed requirements constitute a criminal offence and could lead to suspension or revocation of a licence, the related investigation and criminal or civil proceedings could take some time to complete. In the meantime further contraventions could occur.

Contravention of an injunction or remedial order is a potential contempt of Court, and if found guilty, the subject may be sent to prison, fined or have their assets seized.

(S.22) Civil penalties

Subject of the action	Operator
Rationale	- Punishment / Deterrent

What the Act says-

Section 22 allows the Commission to require an operator to pay a civil penalty for contraventions of the provisions of the Act, AML/CFT legislation or in relation to false, inaccurate or misleading information provided to the GSC. When imposing a civil penalty, the Commission must give notice in writing of the amount of the penalty and the reasons for the decision.

The Commission may not impose a civil penalty if it intends to revoke the operator's permit, licence or certificate or if criminal proceedings have commenced. The Commission may not impose a civil penalty in relation to a contravention of Section 6 (Returns). Instead the Commission may direct the operator to comply within a specified timeframe.

How will this work in practice?

The GSC may make further provisions about civil penalties by an order made under this Section. Such an order will not come into operation until it has been approved by Tynwald. Any amount paid is paid to the General Revenue of the Island.

The Gambling (Anti-Money Laundering and Countering the Financing) Civil Penalties Order sets the notice period at 28 days for a civil penalty to be imposed and required payment within a further 28 days.

The Order also permits an operator to respond to the Commission with any factors that it considers as mitigation for the contravention. Such a response must be made in accordance with GSC guidance and within 14 days of the issue of the notice. The Commission will then consider those mitigating factors plus any aggravating factors when setting the amount of the penalty.

The GSC's principles-based method for calculating the value of a civil penalty is set out below -

- | | |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A. Starting point | The amount of any monies the operator made as a result of failings (where these can reasonably be calculated or estimated) or the amount of a criminal fine that may be imposed on summary conviction for the failing. |
| B. Increase | May be applied where there are aggravating factors (such as those listed at Part 4.3 of this guidance document) that the GSC reasonably considers to warrant an increase of the amount of civil penalty in order to deliver strong deterrence against future non-compliance. |
| C. Decrease | May be applied where there are mitigating factors (such as those listed at Part 4.3 of this guidance document) that the GSC reasonably considers to warrant a decrease in the amount of the civil penalty in order to acknowledge the nature of the failing and actions taken by the operator to address the failing. |
| D. Sense check | The GSC considers that the amount of a penalty should be of sufficient size to act as a punishment and deterrent but not set so high that it |

cannot be afforded and would jeopardise the operator’s business. For that reason the GSC will also consider the financial position of the operator.

It should be noted that the GSC may impose a civil penalty as an alternative to prosecution. Failure to pay a civil penalty will result in referral to HM Attorney General’s Chambers in order to initiate criminal proceedings for the contravention.

The GSC may publish on its website details of civil penalties imposed in accordance with Section 19 of the Act.

An appeal may be made in relation to the penalty itself and/or the public notice. Please see the guidance on S.34 (Appeals to the Tribunal) for further detail.

(S.23) Warning notices

Subject of the action	Individual
Rationale	- Remediation

What the Act says-

Section 23 permits the Commission to issue a warning to an individual who is, or has been, a director, senior manager or controller of an operator before issuing a direction (under Section 18) or in other appropriate circumstances. Such an individual is referred to as a relevant person.

A warning notice may propose or request that the relevant person takes a specified action and the time within which the action must be taken.

Where a warning notice has been given, the Commission must take into account the relevant person’s response to a warning notice before the Commission issues a direction under Section 18 or imposes a prohibition under Section 26.

The Commission’s powers are not limited by the issue of the warning notice and a warning notice is not required before the Commission exercises its powers.

A warning notice has effect for a period of up to three years, as specified in the notice, and will terminate sooner than the date specified if the Commission confirms, in writing, that it is content that any action required in the notice has been completed to its satisfaction.

The GSC may disclose the circumstances surrounding a warning notice to a notified person’s employer, potential employer or a company of which the person is, or is likely to become, an officer.

How will this work in practice?

Where the GSC considers it appropriate to issue a warning to an individual before using its sanctioning powers under the act, the GSC will send a warning letter by recorded post and email, wherever possible. The GSC will also consider whether a copy of the notice should be sent to the person's employer, prospective employer or a company that they are or may become an officer.

The warning notice will set out the concerns that the GSC has and may propose actions for the individual to take in order to avoid the GSC using its sanctioning powers under the act. The warning notice will remain in place for three years but may be terminated early if the GSC are satisfied that the concerns in the notice have been addressed and any actions completed satisfactorily.

The GSC will not publish warning notices but will consider any warning notices that remain valid in respect of fitness and propriety checks undertaken for licence applications or changes in ownership and control. Such considerations may be disclosed to the operator in question.

N.B. There is no requirement for the GSC to issue such a warning before using its sanctioning powers although there are separate notification requirements for Sections 16 (Power to restrict holders of permits or licences), 17 (Licence conditions), 19 (public statements), 25 (Direction not to appoint an individual), 26 (Prohibition of "not fit and proper" persons).

(S.24) Direction to appoint appropriate expert

Subject of the action	Operator
Rationale	- Remediation

What the Act says-

Section 24 allows the Commission to require an operator to appoint or contract an expert to remedy compliance failings regarding the AML/CFT legislation. The operator must appoint the expert based on their knowledge, expertise and ability to adhere to the timescale for the remedial action to be undertaken.

How will this work in practice?

Where the GSC has identified AML/CFT failings and is concerned that the operator in question does not have the appropriate resource to rectify the failing it may require the operator to appoint an appropriate expert.

The GSC anticipates using this Section to address particular technical issues or issues that require more resource to resolve them in a timely manner.

The GSC will not advise who the operator should appoint but may provide the operator with a list of skills or attributes that the person would require to be appropriate.

Examples of appropriate experts include but are not limited to –

- a) AML/CFT consultants;
- b) Financial crime investigators;
- c) Customer due diligence analysts;
- d) System developers.

(S.25) Direction not to appoint an individual

Subject of the action	Operator regarding an Individual
Rationale	- Prevention of further breaches

What the Act says-

Section 25 allows the Commission to direct an operator not to allow a person who is a “not fit and proper” person (regarding AML/CFT requirements) from being appointed as a director or senior manager, or to become a controller without the written consent of the Commission, or to continue as a director, senior manager or controller.

The Commission must give notice to the operator and to the person concerned of any decision under this Section and provide a statement of reasons for the decision.

Where a notice has been given, the direction will take effect if no appeal is made or where an appeal is made and abandoned, the decisions confirmed or varied by the Tribunal. If the Commission is of the opinion that a direction should have immediate effect the notice must include reasons for that opinion.

Any direction or consent by the Commission may be subject to conditions, varied or revoked and written notice must be provided.

A person who has been the subject of such a direction must not contravene the directions by accepting or continuing a position as a director, senior manager or controller. An operator must not appoint a person in contravention of a direction.

How will this work in practice?

The GSC would use this Section where it considers it appropriate to prevent a person from undertaking a particular role whereas Section 26 would be used in situations where a more broad restriction is required.

The direction may include conditions that if met would lead the GSC to review the matter and vary or revoke the direction.

For example, if there were an issue whereby an MLRO had demonstrated a lack of understanding of the reporting requirements under the Proceeds of Crime Act, the GSC could direct that the person must not be permitted to be an MLRO until such time as they are able to demonstrate the necessary skills for the role. In the meantime the individual could continue to work at the company but in another role.

(S.26-29) Preliminary notices, Prohibition of “not fit and proper persons”, Variation and revocation & List of prohibitions

Subject of the action	Individual
Rationale	- Punishment / Deterrent - Protect the public and/or sector

What the Act says-

Section 26 allows the Commission to prohibit a person from one or more functions in relation to a regulated activity carried on, or proposed to be carried on, by an operator where it appears to the Commission that the person is a “not fit and proper” person to perform that function.

A prohibition may prevent an individual from performing any function, a specified function or a function of a specified class in relation to a particular operator, a specified class of operators, or generally.

A prohibition may relate to any regulated activity, a regulated activity specified in the prohibition or a regulated activity of a class prescribed by the Commission.

Contravention of a prohibition is an offence.

The Commission must give the individual an opportunity to make representations in accordance with Section 27 (preliminary notices). The notice must be served personally or by registered post to the individual’s last known address. Once the notice has been served, the prohibition comes into operation once the expiry date for appeals has been reached or, if an appeal has been made, on withdrawal of the appeal or on the determination of the appeal in favour of upholding the prohibition.

Section 27 requires that a preliminary notice must state the Commission’s intention to impose a prohibition, state the proposed terms and reasons for the prohibitions, allow 28 days for representations to be made to the Commission and give particulars of the right of appeal under Section 34.

The Commission must have regard for any representations made in response to a preliminary notice before imposing a prohibition.

Section 28 allows the Commission to vary or revoke a prohibition on application by a prohibited person. The GSC must give the person reasons for any decision made.

Section 29 requires the Commission to maintain and publish a list of prohibitions including the names of the prohibited persons and details of the prohibitions.

How will this work in practice?

The GSC would use this Section where it considers it appropriate to prohibit a person who is a “not fit and proper” person from performing one or more functions in relation to a gambling operator. A prohibition does not include conditions and does not last for a set time although it may be varied or revoked by the GSC.

The nature of the prohibition will vary depending on the reasons for its issue. A prohibition can specify the type of function that the person is prohibited from performing and whether it relates to all operators, certain operators or certain activities.

Examples of prohibitions include but are not limited to -

Function	Activity
a) any role	a) any operator
b) director, MLRO, DO	b) operator “x”, operators “x” or “y”
c) compliance, marketing, business strategy	c) online casinos, peer to peer, business to business

(S.30-31) Suspension or revocation & Conditions and limitations on the right to suspend or revoke

Subject of the action	Operator
Rationale	<ul style="list-style-type: none">- Remediation- Punishment / Deterrent- Protect the public and/or sector

What the Act says-

Section 30 allows the Commission to suspend or revoke an operator’s licence, permit or certificate, at any time, for the following reasons –

- a) the Commission is not satisfied that the operator is under the ownership, management or control of fit and proper persons;
- b) the operator has failed to comply with restrictions (under Section 16), licence conditions (under Section 17), a direction (under Section 18, 24 or 25) of AML/CFT legislation.

Section 31 states that when suspending or revoking a licence, permit or certificate, the Commission must give written notice including reasons for the decision. Where the Commission suspends a licence, permit or certificate it must review the decision on a regular basis.

How will this work in practice?

The GSC will consider suspension or revocation of a licence, permit or certificate in the most serious of cases. The GSC recognises that even a short term suspension can have a huge impact on an operator and so this is considered as a very high impact sanction.

The GSC will suspend, rather than revoke, in serious cases where remediation may still be possible but considers it too risky to permit business activities to continue until the issues have been addressed.

(S.32) Liability of officers of the body corporate

Section 32 states that where an offence under the Act is committed by a body corporate with the consent or connivance or was attributable to neglect on the part of an officer of the body, the officer as well as the body commits an offence.

How will this work in practice?

When referring matters to the Attorney General for prosecution under the Act or AML/CFT legislation, the GSC will make recommendations regarding whether it also considers that any, or all, the following should be prosecuted –

- a) a director, secretary or registered agent;
- b) a liquidator;
- c) a receiver;
- d) a person holding an office under any relevant foreign law analogous to any of the offices specified in paragraph a), b) or c) in respect of the company; or
- e) a person who, in any way, whether directly or indirectly, is concerned or takes part in the promotion, formation or management of the company.

(S.33) Offences and penalties

Section 33 states that a person who commits an offence under the Act for which there is no penalty provided elsewhere, is liable on summary conviction to a fine of up to £5,000, a custody term up to 6 months, or to both.

Criminal proceedings may not be commenced if the Commission has required a person to pay a civil penalty in respect of the contravention unless the person has declined to pay the civil penalty.

(S.34) Appeals to the Tribunal

Section 34 sets out the relevant Sections where an appeal may be made to the Gambling Appeal Tribunal where a person is aggrieved by a decision.

These are -

- a) Section 16 (power to restrict holders of permits or licences);
- b) Section 17 (licence conditions);
- c) Section 18 (directions);
- d) Section 19 (public statements) (in respect of which an appeal may be made before or after the statement has been issued);
- e) Section 22 (civil penalties);
- f) Section 24 (direction to appoint appropriate expert);
- g) Section 25 (direction not to appoint an individual);
- h) Section 26 (prohibition of “not fit and proper” persons);
- i) Section 28 (prohibitions: variation and revocation procedure);
- j) Section 30 (suspension or revocation); and
- k) Section 31 (conditions and limitations on the right to suspend or revoke).

How will this work in practice?

A Gambling (Amendment) Act 2006 (Appointed Day) (No. 3) Order 2017 turned on the remaining provisions of the Gambling (Amendment) Act 2006 including Section 6 (The Gambling Appeals Tribunal). Now that the Gambling Appeals Tribunal has been established in law, work is underway to set the Tribunal Rules and to recruit Tribunal members⁷.

A further amendment to the Gambling (Amendment) Act 2006 has been included in the Anti-Money Laundering and other Financial Crime (Miscellaneous Amendments) Bill which is expected to come into force Summer 2018.

Clause 10 of the draft Bill includes two amendments to the 2006 Act in respect of Tribunals.

Firstly, it adds decisions made under the Gambling (AML/CFT) Act to the list of decisions that may be appealed to the Tribunal. This was a “tidy up” exercise as the legal power to make the appeal to the Tribunal is already provided at S.34 to the Gambling (AML/CFT) Act.

Secondly, it provides that a decision to publish a public statement under S. 19 of the Gambling (AML/CFT) Act shall not take affect where an appeal has been brought except where the Commissioners are satisfied that it is in the public interest not to apply the stay.

⁷ Note that this is led by Treasury, AG’s Chambers and the Appointments Commission.

(S.35) Consequential amendment to the Gambling Supervision Act

Section 14 (Information sharing) of the Act provides a restriction of disclosure of information obtained under the Act except in accordance with Schedule 2 (Disclosure of information) of the Gambling Supervision Act 2010. An amendment to Schedule 2 was required to add information obtained under the Act to the scope of Schedule 2.